

Next Meeting – Monday, March 5, 2007 – 2 PM
Appoquinimink State Service Center
Middletown, Delaware

STATE COUNCIL FOR PERSONS WITH DISABILITIES
BRAIN INJURY COMMITTEE
February 5, 2007 – 2:00 PM
APPOQUINIMINK STATE SERVICE CENTER
MIDDLETOWN, DELAWARE

PRESENT: John Goodier, Chair; Brian Hartman, Co-Chair; Ray Brouillette, Easter Seals; Jim Burcham, BIAD; Dr. Jane Crowley, A.I. DuPont Hospital; Ellen deVrind, Christiana Counseling; Adam Fisher, DOE; Linda Heller, DSAAPD; Tony Horstman, SCPD; Lora Lewis, DPH; Tom Parvis, DVR; Ann Phillips, Parent; Al Rose, DDC; Liz Schantz, Consumer; Kyle Hodges, Staff and Linda Bates, Support Staff

ABSENT: Dianne Bingham, DPC; Dr. Dan Keating, Bancroft Neurohealth; Dr. Jackie Christman, DPH; Virginia Corrigan, Christiana Care; Aaron Deede, Consumer; Janet Leitch, Consumer; Chris Long, DDDS; Mike Merrill, VR/U.S. DVA; Beth Mineo Mollica, DATI; Beverly Stapleford, CDC; Dawn Stewart, Healthy Living; and Wendy Strauss, GACEC

GUESTS:

Laura Cygan, EMSC
Gina Perez, Advances in Management

CALL TO ORDER

The meeting was called to order at 2:07 PM.

APPROVAL OF MINUTES

Lora Lewis will go over her portion and submit her changes electronically to Kyle by the end of this week. Motion was made and seconded to defer action on approval of the January 8, 2007 meeting minutes as submitted.

AGENDA ADDITIONS/DELETIONS

- Item #5 is being deleted since there is not a VCR available—Video on Police Training Regarding Individuals with TBI.
- Linda Heller will give an update of the Waiver.
- John will give the BIAD report.

BUSINESS

TBI Grant Update

Lora Lewis from the Division of Public Health gave the following update on her hand-out (a lot of this material was reviewed at the last two meetings). This summary provided by Lora details goals and objectives for year 2 which is a continuation of Year One to develop a plan for enhancing Delaware's traumatic brain surveillance capability and continues to try to develop a statewide traumatic brain registry. Lora noted a couple of goals as follows:

- Investigate the feasibility of applying for a Medicaid Waiver for children with TBI.
- Identify additional sources of funding for TBI initiatives.

The goals are essentially the same as in year one except some things have been added to make them more measurable. For example, awareness of TBI has to be defined with some measures to show improvement.

Under Goal 3: Objective 3.3 has been added: Increase participation in activities to make legislative, regulatory and policy changes by survivors, underserved populations, and families of children who are survivors of TBI. This is going to be accomplished by: (1) a contract with the A I DuPont Hospital that Jane and DPH are developing; and (2) a small contract with the Coordinating Council that is helping to improve participation of families with children with special help care needs. The work plan does not have that many changes from what was previously presented. There are added objective dates and datelines for measurable goals.

There will be a contractor to evaluate year one activities. There will also be a contract to evaluate progress in year two as well. There will be a contractor who will help us determine how the PSAs and information on the website are working to increase awareness of TBI which are part of the objectives in Goal 1. Regarding Goal 2, there will be a contracted consultant who will help us with the development of a TBI Registry or some other way to determine surveillance of TBI. Regarding the Work Plan Objective 2.2 (Increase TBI professional development which depends on development of an educational plan), there is a small contract in the budget to develop that plan. Goal 3 relates to the development of legislative policy changes.

The grant was submitted on January 19. As of now, we do not know what will be approved. Five contracts are involved: BIAD; A.I.duPont Hospital, Evaluation, Small Educational (Dan Keating gave us a consultant's name) contract and a Small TBI Families Participation contract. The Grantee meeting will be held on March 14, 15 and 16th. Lora will be taking Jane and Linda. Next year, Lora is hoping to take a brain injury survivor or a family member of a brain injury survivor. This will depend on funding.

John asked about the budget provided which appears to total \$77,580 when the grant is for \$100,000. Lora confirmed that the grant for Year 2 is \$118,600. Lora said that travel,

an audit fee and supplies make the difference. Lora said that until the budget is approved, this information should not be provided.

Ann had a question about Methodology on page two. Who is going to be in charge of updating and distributing the resource directory since on page one no positions are being requested for this project. Lora said that it will be BIAD and this is in the Work Plan. The survey for the families is part of the evaluation in year two, which will be contracted. Public Health is planning on taking several maternal and child health efforts and combine monies to get a more comprehensive evaluation since we will have more money to spend. Part of the evaluation in year two is to survey the families for satisfaction of Delaware's services. In year two a RFP will be issued since we will hopefully have \$50,000 to spend.

Gina Perez with Advances in Management is providing is the consultant for the evaluation in year one. Gina reported that her role has three primary roles: BIAD work; CDS needs assessment methodology progress to be completed by the end of March and to look at a policy analysis. BIC is part of that evaluation to understand where you have been, what you are doing now, and what you are hoping to do in terms of policy, legislation, and regulations regarding brain injury for adults and then look at potential possibilities for children. Gina said the next step is to have a meeting with BIC representatives to have a better understanding of interests and expectations going forward.

PATBI Report

I. PATBI GRANTEE MEETING

A. Advocacy Award

HRSA awarded the Delaware P&A its 2006 TBI Advocacy Award at its January 10, 2007 PATBI Grantee Meeting. In particular, HRSA was pleased with the increase in students identified under the TBI category in the Delaware special education system. Since this has been a collaborative initiative of the entire SCPD Brain Injury Committee, the award recognizes the Committee's success in prompting systemic change.

B. Cultural Competency

The meeting included a presentation on cultural competency. Statistically, some minority groups (e.g. Hispanic) are statistically "underserved" within the TBI system. Agencies were encouraged to be sensitive to cultural differences. For example, in some cultures, an individual may not agree to pursue services without the approval of family or church pastor. There is also a "military culture" which promotes minimizing pain and weakness. Returning Veterans may therefore be "programmed" to deny symptoms of TBI.

Linda commented that a while ago she had a conversation with Dr. Pedro Ferreira, a neurophysiologist, who does a lot of work with the Spanish population in Sussex Co. Dr. Ferrara felt there is a need to address some of these issues. Lora stated that the BIAD met with the Minority Affairs Director of Public Health last week to discuss outreach for underserved populations including the Hispanic population, etc. so they have some ideas how to further their outreach based on this discussion.

C. Veterans

An attorney, Craig Kabatchnick, has started a Veterans Benefits Law Clinic in conjunction with a North Carolina law school. He was formerly employed by the V.A. and defended the V.A. in challenges to denials of Veterans Benefits. He is interested in helping veterans nationwide. His contact information is attached. On request, Brian would be happy to share his technical outlines on veterans' claims.

Brian commented that Craig Kabatchnick is supervising law students to help nationwide with helping veterans' with their claims. Brian also stated that Widener Law School has a Veterans' Clinic. This information could be added to the next addition of the BIAD's Resource Guide.

Lora commented that it is the responsibility of the BIAD in Year 2 of the contract to outreach the underserved population, including veterans. John commented that Dr. Zaza has agreed to serve on the BIAD's Advisory Board.

II. HOMELESSNESS CONFERENCE

Brian provided a flyer on a conference entitled "Ending Homelessness in Delaware" which is scheduled to occur at the University of Delaware on February 23. Delaware's homeless population includes individuals with TBI.

Brian said that this conference is relatively inexpensive to attend. Kyle said that if there is anyone that would like to attend and is not affiliated with an organization, please contact Linda Bates.

III. MEDICAL IDENTITY THEFT

Brian provided an article from the January issue of the ABA Journal--medical identity theft is becoming a prevalent problem. Once patients' records are obtained, bogus insurance claims may be filed in that patient's name. If someone needs an expensive procedure, he can "purchase" the identity of an insured person and obtain medical equipment of services by pretending to be the insured. This is another context in which frequent users of health care services, persons with disabilities, can be victimized.

IV. ELDERLY DRIVING RESTRICTIONS

Brian provided a February 4 News Journal article. Several states are exploring risks presented by elderly drivers. The article recites that the elderly are as safe as other drivers until age 75. Drivers 85 and older, however, are as likely to be involved in a fatal crash as those ages 16-19. Some states are authorizing limited licenses (e.g. only local driving permitted). At least 15 states have accelerated renewal schedules for older drivers (e.g. requiring renewals every 2 years from ages 81-86 and every year thereafter). Brian predicts that legislation in this context will be introduced in Delaware. Depending on its scope, such legislation may also impact drivers with disabilities of any age, including those with TBI and related conditions (e.g. seizure disorders).

V. HEALTH INSURANCE GRIEVANCE/APPEAL REGULATIONS

On February 1, the Department of Insurance issued proposed regulations covering appeals of adverse decisions by State-regulated health insurers. This is an important set of standards since claim denials are a common barrier to access to health care by persons with disabilities, including TBI. Brian submitted the following critique to the SCPD P&L Committee for review at its February 7 meeting. As the critique suggests, there are several weaknesses in the proposed regulations, including overlooking assistive technology denials; omitting some common TBI providers (e.g. psychologists); and adopting a narrow definition of medical necessity. A public hearing on the proposed standards will be held on February 26 at 10:00 a.m. in the Consumer Services hearing room, 841 Silver Lake Blvd., Dover, DE 19904.

17. Dept. Of Insurance MCO Appeal Regulations [10 DE Reg. 1233 (2/1/07)]

The Department of Insurance proposes to adopt a wholesale revision of its regulations covering review and appeal of MCO decisions. The impetus for the new regulations is S.B. No. 295 which was signed by the Governor on July 6, 2006. S.B. No. 295 transferred regulatory authority over HMOs/MCOs previously vested in DHSS in the Department of Insurance. The legislation is comprehensive and prescriptive in scope and the regulations mirror this scope and detail.

As background, the regulations cover State-regulated MCOs. They address multiple methods for an insured to question the decision of an MCO. First, MCOs must offer an "internal review process" (IRP). If an insured receives an adverse decision from the IRP, this is known as a "final coverage decision". The insured can then seek further review through either: 1) mediation (§4.0); or 2) arbitration (§6.0) (for denials of emergency care services or denials not based on lack of medical necessity) or external review (§8.0) by an independent utilization review organization (IURO) (for denials based on medical necessity or appropriateness of services). If there are mixed bases underlying a denial of a claim, review by an IURO is favored. See §5.3.1. The Delaware Code authorizes the MCO to appeal an adverse IHCAP decision to the Superior Court. See Title 18 Del.C. §6415(b).

Brian provided the following observations.

First, the insured can assign a claim to a health care provider who can then pursue “appeals” with the insurer. See definition of “authorized representative” in Section 2.0. This is similar in effect to H.B. No. 438 which passed the House but not the Senate in 2006. The SCPD endorsed that bill.

Second, in Section 2.0, the definition of “health care service” could be improved. It covers “services and supplies”. This may not cover denials of durable medical equipment (DME) or assistive technology (e.g. nebulizer, hearing aid, wheelchair; AAC device). Cf. reference to “products” in definition of “medical necessity” in Section 2.0. The Legislature contemplated reviews of denials of “devices”. See reference to “device” in Title 18 Del.C. §6417(c) (3) e (as amended by S.B. No. 295). The Dept. Of Insurance should consider inclusion of references to both DME and AT (defined at 29 U.S.C. §3002).

Third, in Section 2.0, the definition of IHCAP omits the term “reduction” which is explicitly included in the definition of “adverse determination”. It should be included for consistency.

Fourth, in Section 2.0, the definition of “medical necessity” should be amended to include “disability” and “condition”. There are health conditions (e.g. cerebral palsy; pregnancy) that may require medical services but are not diseases or illnesses. Compare definition of “health care services” in Section 2.0 which includes a reference to “disability”. See also reference to “disability” in definition of “health care services” in Title 18 Del.C. §6403(d) (as amended by S.B. No. 295). Cf. reference to “condition” in Section 9.1.

Fifth, although the list of professionals within the definition of “provider” in Section 2.0 is not exclusive, it would be preferable to include some mental health related practitioners who are commonly included in health care networks (e.g. licensed psychologist; LCSW).

Sixth, Section 3.1.1 could be improved by substituting 12 point type for 11 point type.

Seventh, Section 3.1.2 could be improved by proscribing use of italicized type which is generally more difficult to read than “block” styles.

Eighth, the regulations do not address maintenance of services during the pendency of reviews and appeals. This is generally viewed as a matter of basic due process.

Compare 16 DE Admin Code 5100, §5308; 42 C.F.R. §431.231.230 (Medicaid); and Title 14 Del.C. §3143. At a minimum, the regulations could require continuation of services during expedited reviews of imminent and serious threats within the purview of Section 9.1. The discontinuation of such services could be life-threatening.

Ninth, coverage of Medicaid MCOs is unclear. Section 5.5 suggests that the arbitration and IHCAP systems do not apply to Medicaid MCOs. Based on “inclusio unius, exclusio alterius”, this would suggest that mediation in Section 4.0 is available to review Medicaid MCO disputes. This should be clarified. Parenthetically, H.B. No. 295 did not exclude Medicaid MCOs from its scope [Title 18 Del.C. §6403(e)] and it would be preferable to apply the consumer protections in the regulations to Medicaid MCOs unless they actually conflict with Medicaid protections. For example, a mediation system could supplement and not supplant a right to a Medicaid administrative hearing.

Tenth, it would be preferable to include an authorization for an “in forma pauperis” application to waive (in whole or part) the \$75 fee for arbitration otherwise required by Section 6.1.3.3. There may be indigent consumers who will lack the financial wherewithal to pay \$75 to contest an insurance denial. The Department would then have to determine whether the \$75 fee would be waived or imposed on the insurer. See Section 6.7.1. By analogy, the insurer pays all costs of an IHCAP review. See Section 11.1.

Eleventh, Sections 14.1 and 14.2 protect a “covered person” and “provider” from retaliation. It would be preferable to also include the covered person’s employer if there is an employer-based group policy. Otherwise, the insurer could retaliate against the employer (e.g. through non-renewal of policy).

Brian recommends that the above observations be shared with the Department of Insurance.

Brian added that SB 6 which was recently introduced and was not included in this report which is similar to SB 146 that failed to pass last year. This establishes a Delaware Health Insurance Pool. This bill sets up the state as a co-insurer to keep rates down so if a small business with 50 or fewer employees or individual without insurance and has income below a specified amount, they will be able to get insurance through one or two providers. The rates will be lower because the State subsidizes any losses. The State Chamber of Commerce has endorsed this bill. The way it works is that any insurer who insures employees are required to submit good faith bids and then the Insurance Commissioner will decide one or two companies that will be implementing this bill. Last year, Governor Minner only put \$1 million into the budget; but this year the Governor put \$5 million which would cover one half of a year funding. This is seen as a creative way to make health insurance money available for individuals who don’t have a lot of money and also employers who otherwise cannot afford the coverage. You can only enroll if you have been a Delaware resident for one year for a certain period of time; and you have to be a full time 30 hour a week employee.

Kyle commented that the Medicaid Buy In is the recommended FY 08 budget. This is the Commission’s number one priority. The DHSS JFC budget hearings are February 27, 28 and March 1.

HRSA Benchmarks

Linda Heller reviewed the hand-out “Pathway for Systems Change: Benchmarks.”

The hand-out is a tool for each TBI Committee of each state, state agencies or other interested parties and is provided by HRSA (Human Resource Service Administration) which holds the grants across the country. This hand-out goes through and evaluates where we are now and where we have been. Our grant has four core components which are covered in a State TBI project. Every state is required to have a general action plan. Linda also said that there is another document called a Model to Access Program Infrastructure which goes along with the benchmarks. Linda stated that is a guideline for the BIC members; and as we move along this will be a good tool to look at, including strategic planning. Linda said that since this is an ad hoc Committee of the SCPD, a summary should be given of the BIC accomplishments. Kyle commented that the BIC will continue; and where appropriate, updates on the BIC are given at the full SCPD meetings.

Even though these benchmarks are dated 2001-2002, they are still applicable. Linda commented that when they go to the National March meeting, new benchmarks may be given. When Lora was given the self assessment, a copy of the most recent benchmarks was given. Lora will share this information.

Lora asked about the TBI action plan—does it really exist? Linda commented that a basic action plan had been done a few years ago with the first grant. Some of the states have very detailed action plans now; which is something that DE needs to do. Linda will send Lora a copy of this past action plan.

Lora stated that the self assessment contains questions about the work that we do around TBI. So, if you look at the benchmarks, you can figure what kind of questions you would be asking. It was agreed that a small group of Al, Brian, Ellen, Ann, Linda, Liz, John, Laura Cygan, Lora and Kyle will meet on March 12 at 1:30 pm (Appoquinimink, if available). Lora will send the self-assessment report electronically to Kyle. March 31 is the deadline submission date.

Updates

Concussion Card

Jane gave the following update:

- Kyle and Jane met with one of the members of the Medical Advisory Board for the Delaware Interscholastic Athletic Association (DIAA) who is over all the type of athletics in the state. They spoke about their prospective about the PRAAG guidelines 2004 which outlines all procedures for concussions and the Return to Play guidelines. On evaluation talks about return to standard play in 15 minutes and they first do non-aerobic activities and then aerobic activities. Another evaluation requires a gradual return to a level of practice and then another step

before you go back to regular play. Jane said that this is a very deliberate and thoughtful checked process; and this is at odds with their current manual guidelines from the National Federation of State High Schools. So, they cannot promote the sideline assessment like we had developed until their own regs “catch up”. Kyle stated that before we distribute any of the cards or make the posters, the DIAA wants to change the actual rulebook to require removal of play when they suspect a head trauma and they cannot return to play unless it is authorized by a MD or DO.

- Kyle and Jane said the DIAA did say that they agreed to have general information in the locker rooms and information to the parents. Jane said that they are uncertain about the coaches’ perception and the level of parental knowledge. Jane said that they agreed on a poster in the locker room and an information sheet to the parents. They also agreed that Jane and Kyle could go and speak with the football coaches and athletic directors.
- Kyle said that rulebooks will go out to all coaches with the 15-minute play language being removed. Kyle will find out what kind of timeline before this happens.
- Jane said that the organization is behind this information; but there is a level of institutional issues in place.
- Kyle said that 12 schools in Delaware were using computer baseline testing. Jane said that not all schools in the state could afford this type of testing so we need to continue our education to all athletes.
- Linda Heller said that when they attend the HRSA meeting, they could check with other states to see if we could get any resources or help.
- Kyle said that the next step is for the distribution of posters and also the timelines for the Rulebooks “15-minute” change.

Linda Heller gave the following waiver update:

- The amendment to the Elderly and Disabled waiver will be submitted on March 31 with the implementation on July 1.

April TBI Training

A save the date card was provided regard the April educational training. The registration forms will be sent out around March 1. Kyle thanked Jane and AI DuPont staff who have been instrumental in putting on this conference. This conference will be held from 8:30 am to 2:30 pm at the AI DuPont Hospital’s third floor Lecture Room on April 17, 2007 at a cost of \$10 per person.

DOE TBI Unit Count

Adam gave the following report:

The September and October audit count identifies 25 TBI children in eight schools—with zero known in Kent County. The January count update will be given to Adam soon.

Adam will send to Kyle to distribute to the BIC. Adam said that some parents and districts do not put their children under a TBI classification and they would be put under orthopedic impairment. Jane said that Delaware's definition for special education purpose is "blunt external trauma". Kyle and Brian suggested that we review the regulations now to see if Delaware can expand to ABI.

OTHER BUSINESS

Kyle said that Senator Henry has agreed to again sponsor the bike helmet bill extending the age required to wear a helmet up to age 18. Representative Ewing has agreed to be the House sponsor. Kyle will contact Senator Henry to see when it is going to be introduced so Rep. Ewing can then be notified. Brian said that he feels that it would be beneficial to amend the synopsis to indicate that the bill has been endorsed by the Division of Public Health.

ANNOUNCEMENTS

- John Goodier announced that the BIAD conference will be held on Wednesday, October 24 at the Dover Sheraton. The topic will be "The Road Back". Drs. John White and Neil Kaye will be the speakers with Cole Gallaway as the moderator for the panel on brain injury survivors that have survived on various levels. The CEUs have been approved except for Nursing, which is pending. The Save the Date flyers are out on schedule. The mailings will go out on schedule. The Information and Resource Directory is completed and is available in Word or PDF.
- March is Brain Injury month and Brian will be the recipient of the advocacy award. The luncheon will be held on March 9 at the Duncan Center in Dover at 12 noon.
- The BIAD JFC Hearing will be on Thursday, March 1 at 1:00 pm.
- Kyle will send an invitation to the March 9 luncheon to the BIC.
- Kyle distributed, from the Center for Disabilities Studies, the "Connecting the Dots" hand-out. If you would like more copies, contact Ann Phillips or Tracy Mann.
- John announced that the BIAD is looking for some good board members. Contact John with names and phone numbers and they will be contacted.

ADJOURNMENT

The meeting was adjourned at 3:55 PM.

Respectively submitted,

Kyle Hodges
SCPD Administrator

